

**Hearing Date: October 23, 2019**

**Hearing Time: 10:a.m.**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

JUDGE: Hon. Robert D. Drain

-----x

In re

(Jointly Administered)

Chapter 11

SEARS HOLDINGS CORPORATION, et al.,  
Debtors.:

Case No. 18-23538 (RDD)

Movant's **Reply Brief/Affidavit**  
in Response to Debtors's Objection To  
Relief from Automatic Stay **Doc#5388**

-----x

STATE OF NEW YORK )

) SS.:

COUNTY OF NEW YORK )

**MOVANT'S REPLY BRIEF/AFFIDAVIT  
IN SUPPORT OF MOTION TO LIFT AUTOMATIC STAY**

I BRIAN COKE NG, being duly sworn, deposes and says under penalty of perjury:

That, in further support of my motion for Relief from the Automatic Stay, under 11 U.S.C§362(d)(1) and local rule 4001-1, derived from former Local Bankruptcy Rule 44(a) I respectfully submits this Reply Brief in Response to Debtors Objection dated 10/16/2019.

**CONSPIRACY IN TAMPERING AND ALTERING THE TRANSCRIPT  
OF THE HEARING HELD BEFORE THIS COURT ON FEBRUARY 14, 2019**

1. Upon information belief, there is a conspiracy to directly mislead this honorable Court, the Debtors and others unknown had conspired to tampered and altered the transcript of the hearing held before this Court on February 14, 2019, in an attempt to wrongfully suppress the facts pertaining to my Post-Petition Claims of November 6, 2018. In fact, during the hearing held before this Court on February 14, 2019, the debtors attorney(s) had advised this Court, that, on quote: *"I have the attached copies, your honor, of the records that I received, and I don't think there's-- I don't think anybody's denying him. I think they don't understand what he's asking for."* See such statements by Garrett Fail attached hereto as **Exhibit (2)**.

**DECLARATION OF JESSIE B. MISHKIN DATED JULY 22, 2019**

2. On July 22, 2019, Jessie B. Mishkin filed a declaration and its accompanying exhibit A with this court, and to which he had claimed "is a true and correct copy of excerpts from the transcript of the hearing held before this Court on February 14, 2019. Additionally, Jessie B. Mishkin further claimed, that "*Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.*". A copy attached hereto as **Exhibit (1)**

3. The transcript of the hearing held before this Court on February 14, 2019, has been tampered and altered to read differently, wrongfully exaggerated the facts in an effort and attempt to mislead this Court, it had failed to match the Certified Court Transcript, and specifically suppressed the facts pertaining to my Post-Petition Claims of November 6, 2018.

**POST-PETITION CLAIMS CONCERNING THE FAILURE TO COMPLY  
WITH THE JUDICIAL SUBPOENA DATED JUNE 29, 2018**

4. My post-petition claims concerning the debtor's failure to comply with the subpoena for all of my medical records was presented and addressed at the hearing held before this Court on February 14, 2019. See pages 65 through 69 of the Certified Court transcript of the hearing held before this Court on February 14, 2019, attached hereto as **Exhibit (2)**.

5. The debtors conduct on November 6, 2018, to which they had created and provided an altered and falsified portions of the medical records is not acceptable. We know as and for a fact, that the fictitious medical records that were provided to me on November 6, 2018, were NEVER available in August 2018, NEVER available in September 2018, and NEVER available in October 2018, and the totality of my medical records has still not received.

6. In fact, the debtors here, had told and advised the Judge at the Supreme Court hearing held on September 20, 2018, that they had provided all the medical records requested in the Judicial subpoena. The debtors have an obligation to provide all medical records, but failed.

7. The Order and Judicial Subpoena Duces Tecum dated on June 29, 2018, did in fact warned patently clearly, in separate part and among the other things, on quote: "**Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person(s) on whose behalf this Subpoena was issued for a penalty not to exceed fifty dollars, and all damages sustained by your failures to comply.**"

8. My medical records needed to support all my claims, including claims to the workers compensation carrier for reimbursements for out of pocket for prescription medicines.

9. The debtors did not assert any written or oral objections to my subpoena for my medical records. There are damages caused by the failure to act in compliance with the judicial subpoena. In light of the debtors failure to comply with the subpoena, I am respectfully requesting that they are estopped from challenging all damages including punitive damages.

10. For example, in my workers compensation case, I have similar protections as those you will find under the Federal Employee Compensation Act ("FECA") at 20 CFR § 10.15, to which pertains to wrongfully impede a claim for reimbursement for out of pocket expenses for necessary prescription medicines.

#### **INSURANCE POLICY PERIOD AND COVERAGE TERRITORY**

##### **Insurance Policy No. HDO G71097614**

11. I was able to locate the Debtors insurance policy No.: HDO G71097614; Type of policy: General Liability; Date of Inception: 08/01/2018; date of Expiration: 01/01/2019; Insurer: ACE American Insurance Co. (ACE). This Policy is relevant in that, it covered periods to which my post-petition claims reflects a failure to comply with the judicial subpoena for all my medical records, the clear **explicit** display and showings of such failure occurred on **November 6, 2018**. I had raised and addressed such failure at the hearing held before this Court on February 14, 2019.

**CONFIRMATION OF THE INSURANCE POLICY PERIOD AND COVERAGE**

12. By letter dated February 6, 2019, the debtors attorneys ("Garrett Fail") wrote to me and had confirmed the insurance policy No.: HDO G71097614; Type of policy: General Liability; Date of Inception: 08/01/2018; date of Expiration: 01/01/2019. But, Mr. Fail willfully and deliberately failed to address my post-petition claims to which reflects the debtors failure to comply with the subpoena for all my medical records. See copy attached **hereto as Exhibit (3).**

**CONCLUSION**

For the foregoing reasons, I respectfully requests entry of an order granting the Motion, and providing the Movant relief from the automatic stay to submit a "Request For Assistance By Injured Worker" and its accompanying complaint to the State Of New York Workers' Compensation Board, and further order a copy of this motion and all its supporting papers and its accompanying exhibits to be a supporting part of the claims stated in my pending adversary proceeding (Adv. Pro. No. 19-08269), and for such other and further relief as the Court may deem just and proper under the circumstances.

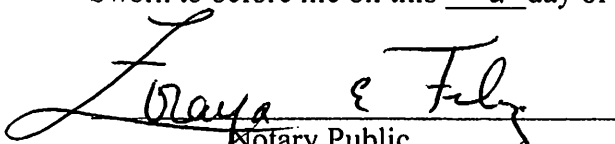
Respectfully Submitted,

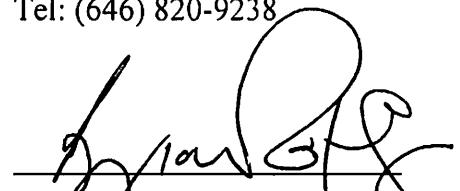
Dated New York, New York  
October 22, 2019

All Prepare for, upon request of  
BRIAN COKE NG, *Pro Se*  
40 Ann Street  
New York, NY 10038

**Mailing Address For All Mails:**  
Church Street Station, P.O.  
Box 2723, New York,  
New York, 10008  
Tel: (646) 820-9238

Sworn to before me on this 22 day of October, 2019

  
Notary Public  
**FELIZ ZORAYA E**  
Notary Public State of New York  
No. 01FE5078179  
Qualified in Queens County  
Commission Expires 05/19/2023

  
BRIAN COKE NG

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X		
In re	:	Chapter 11
	:	
SEARS HOLDINGS CORPORATION, et al.,	:	Case No. 18-23538 (RDD)
	:	
Debtors.:	:	(Jointly Administered)
	:	
	:	JUDGE: Hon. Robert D. Drain
	:	
	:	
-----X		

**CERTIFICATE OF SERVICE**

I, Brian Coke Ng, hereby certify that on October 22, 2019, I caused true, complete and accurate copies of the following documents:

1. Movant's Reply Brief/Affidavit In Support Of Motion To Lift Automatic Stay, and each and every parts of its exhibits to be served upon all the parties of interest on the master service list, including the following parties by causing copies of the same to be filed on the electronic filing system (CM/ECF) of the United States Bankruptcy Court for the Southern District of New York, which in turn sent copies of each of the foregoing to the following parties and/or their counsel:

Counsel to Kmart Holding Corporation  
Sears Holdings Corporation (Debtors)  
Weil Gotshall & Manges, LLP

Attorneys for Defendants PDX, Inc., and  
National Health Information Network, Inc.  
Kirby Aisner & Curley LLP

And also upon the following parties by causing copies of the same to be deposited in a sealed, prepaid envelope in an official depository under the exclusive care and custody of the United States Postal Service, to be delivered by overnight delivery addressed to each of the following:

Honorable Robert D. Drain  
United States Bankruptcy Court for the Southern  
District of New York  
300 Quarropas Street, Room 248  
White Plains, NY 10601  
(Marked as "Chambers Copy")

Counsel to Kmart Holding Corporation  
Sears Holdings Corporation (Debtors)  
Weil Gotshall & Manges, LLP  
767 5th Avenue  
New York, N.Y. 10153

Kirby Aisner & Curley LLP  
700 Post Road, Suite 237  
Scarsdale, New York 10583  
Attorneys for Defendants PDX, Inc., and National Health Information Network, Inc.

I declare under penalty of perjury that the foregoing is true and correct.

New York, New York

Dated: October 22, 2019

  
Brian Coke Ng

# **EXHIBIT 1**

WEIL, GOTSHAL & MANGES LLP

767 Fifth Avenue

New York, New York 10153

Telephone: (212) 310-8000

Facsimile: (212) 310-8007

Ray C. Schrock, P.C.

Jacqueline Marcus

Garrett A. Fail

Sunny Singh

*Attorneys for Debtors*

*and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X		:	
In re	:	:	Chapter 11
:	:	:	
SEARS HOLDINGS CORPORATION, <i>et al.</i> ,	:	:	Case No. 18-23538 (RDD)
:	:	:	
Debtors. <sup>1</sup>	:	:	(Jointly Administered)
:	:	:	
-----	:	:	
BRIAN COKE NG,	:	:	
	:	:	
Plaintiff,	:	:	Adversary Proceeding
	:	:	Case No. 19-08269 (RDD)
-against-	:	:	
:	:	:	
SEARS HOLDINGS CORPORATION; KMART	:	:	
HOLDING CORPORATION, and PDX, INC.	:	:	
("Non-Debtors")	:	:	
Defendants.	:	:	
:	:	:	
-----X		:	

**DECLARATION OF JESSIE B. MISHKIN IN SUPPORT OF DEBTORS' MOTION TO  
DISMISS ADVERSARY COMPLAINT**

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); SR - Rover de Puerto Rico, LLC (f/k/a Sears, Roebuck de Puerto Rico, Inc.) (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.



Pursuant to 28 U.S.C. § 1746, I, Jessie B. Mishkin, hereby declare and state as follows:

1. I am Counsel at Weil, Gotshal & Manges LLP and counsel for Debtors in the above-captioned proceeding.

2. I submit this Declaration in support of the Debtors' Motion to Dismiss Adversary Complaint (ECF No. 7).

3. Attached hereto as Exhibit A is a true and correct copy of excerpts from the transcript of the hearing held before this Court on February 14, 2019.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 22, 2019  
New York, New York

/s/ Jessie B. Mishkin  
Jessie B. Mishkin

# Exhibit A

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 18-23538-rdd

4 - - - - - x

5 In the Matter of:

6

7 SEARS HOLDINGS CORPORATION,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 February 14, 2019

17 10:03 AM

18

19

20

21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: NAROTAM RAI

1 to his records.

2 MR. NG: The judge find this -- made an order and  
3 had found that this is something that is subject for trial,  
4 a trial. Trial of fact.

5 THE COURT: Well, but -- I guess --

6 MR. NG: Here's the trial --

7 THE COURT: I'm trying to -- I'm trying to  
8 formulate what I want to say. Whether you have a new claim  
9 or not, for 2018, depends on when that claim arose, and if  
10 you're saying that the Debtors have an obligation to give  
11 you records in 2018, and they didn't do it, then that might  
12 be a 2018 claim. On the other hand, if you're saying the  
13 Debtors have an obligation to give me records, and they gave  
14 me the records, but the records are false --

15 MR. NG: Utterly.

16 THE COURT: -- and the alterations happened in the  
17 past, not in 2018, then you don't have a 2018 claim.

18 MR. NG: It happened in 2018.

19 THE COURT: Well, I'm sorry, you're saying that  
20 they were falsified in 2018 --

21 MR. NG: Yes, in 2018.

22 THE COURT: -- as opposed to in the past?

23 MR. NG: Yes, within November 6, and November 6,  
24 2018, (indiscernible).

25 THE COURT: Well, we have a -- we have a --

1 there's an administrative claims bar date, okay, that's  
2 going to be set. This would be a post-petition claim,  
3 because you're saying it's November, right?

4 MR. NG: It's November and August, and --

5 THE COURT: Well, if it's August, it's pre --  
6 anyway, there's going to be a bar date. I'd rather not do  
7 this orderly. I think you need to comply with the bar date,  
8 file your claim, and then they'll have a better idea of what  
9 it's about, and it'd probably be -- I don't know how we  
10 liquidate it. I can't tell you right now, sir, but it  
11 doesn't sound like -- it's sounds like it may -- depending  
12 on what the claim actually says in writing, I can figure out  
13 how to deal with it.

14 MR. NG: Well, I suffered emotional distress, so I  
15 want --

16 THE COURT: No, I don't mean the consequences of  
17 the claim. I'm saying, where the claim -- how the claim  
18 arose, what the claim is based on, and I don't really know  
19 enough about that, at this point, because I don't have  
20 anything that really lays it out. The -- a bar date order  
21 what will say, you have to file proofs of claim by X date,  
22 you know, I don't know what it'll be, end of March,  
23 beginning of April, some date. File your claim, lay out  
24 what you think the claim is and when it arose and what it's  
25 for, and then we can decide what to do with this. I don't

1 really -- I have your complaint for the State Court action.  
2 I know what that's about, but I don't really have anything  
3 that lays out this claim.

4 MR. NG: Well, the claim that I'm referring to  
5 right now, that --

6 THE COURT: No, I -- I -- look, I do much better  
7 with things in writing.

8 MR. NG: Yes.

9 THE COURT: You need to lay it out in writing,  
10 because it -- I couldn't figure it out, okay?

11 MR. NG: Okay, Your Honor. So --

12 THE COURT: So, I'm going to adjourn this until  
13 after the bar date, the hearing on this motion, I'm going to  
14 adjourn it until after the bar date. The bar date will be  
15 set very soon. It'll probably be a hearing in April, okay?

16 MR. NG: Okay, Your Honor.

17 THE COURT: Okay.

18 MR. NG: I'm suffering a lot of damages and  
19 medical bills and everything, and that's why I'm trying to  
20 seek -- get justice.

21 THE COURT: And if it was a question of the  
22 records being released, I would direct the Debtors to  
23 release the records, but it sounds like they were released  
24 to you. The dispute is to whether they were altered at some  
25 point.

# **EXHIBIT 2**

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 18-23538-rdd

4 - - - - - x

5 In the Matter of:

6

7 SEARS HOLDINGS CORPORATION,

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9 Debtor.

10 - - - - - x

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12 United States Bankruptcy Court

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21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: NAROTAM RAI



1 have to see doctor.

2 THE COURT: Right, but is that for the same  
3 exposure? What is the claim against Kmart that dates from  
4 the post-bankruptcy period?

5 MR. NG: Okay, it all began in 2010 when I went  
6 there and I got treatments.

7 THE COURT: Right, no, I understand all that, but  
'8 what new thing has Kmart, you allege, done, after the start  
9 of this bankruptcy case in October '13?

10 MR. NG: Yeah, they have lied to the Supreme Court  
11 that they have given me records, medical records, when they  
12 did not.

13 THE COURT: But is that -- is that -- you made a  
14 request after the start of the bankruptcy case?

15 MR. NG: No, Your Honor.

16 THE COURT: Well --

17 MR. NG: It was before the bankruptcy that the  
18 judge -- the hearing was October -- September 2018, and the  
19 judge went -- sent an Order for -- give me a moment, Your  
20 Honor. Okay, so the judge said -- the judge issued a  
21 subpoena and they did not provide me with all the records  
22 like, that I need.

23 THE COURT: The request -- so, you requested  
24 records of them --

25 MR. NG: Yeah, the judge --

1 THE COURT: -- when -- I'm sorry, when did you  
2 make that request?

3 MR. NG: The judge signed the Order June 29, 2018.

4 THE COURT: Right.

5 MR. NG: They were served, and we all just  
6 appeared before the judge --

7 THE COURT: Right, but then the bankruptcy  
'8 happened, so they probably didn't -- then everything  
9 stopped, is my guess.

10 MR. NG: Everything stopped, but the judge still  
11 appear -- during that time, after heads --

12 THE COURT: So, it's a -- basically, to provide  
13 records now?

14 MR. NG: To provide records.

15 THE COURT: Okay, so I can I interrupt you? If  
16 that's the case, can they provide him the records?

17 MR. NG: They did not.

18 THE COURT: No, I'm asking the Debtors' lawyer. I  
19 don't necessarily view this as a litigation. I just think  
20 he's entitled to his records, right?

21 MR. FAIL: In the -- I have the attached copies,  
22 Your Honor, of the records that he received, and I think  
23 he's saying they were falsified. I don't think there's -- I  
24 don't think anybody's denying him. I think they don't  
25 understand what he's asking for.

1 THE COURT: You think -- you think they're  
2 incorrect, or is it you think they're falsified?

3 MR. FAIL: I thought he's attached all his pleas  
4 to his records.

5 MR. NG: The judge find this -- made an order and  
6 had found that this is something that is subject for trial,  
7 a trial. Trial of fact.

8 THE COURT: Well, but -- I guess --

9 MR. NG: Here's the trial --

10 THE COURT: I'm trying to -- I'm trying to  
11 formulate what I want to say. Whether you have a new claim  
12 or not, for 2018, depends on when that claim arose, and if  
13 you're saying that the Debtors have an obligation to give  
14 you records in 2018, and they didn't do it, then that might  
15 be a 2018 claim. On the other hand, if you're saying the  
16 Debtors have an obligation to give me records, and they gave  
17 me the records, but the records are false --

18 MR. NG: Utterly.

19 THE COURT: -- and the alterations happened in the  
20 past, not in 2018, then you don't have a 2018 claim.

21 MR. NG: It happened in 2018.

22 THE COURT: Well, I'm sorry, you're saying that  
23 they were falsified in 2018 --

24 MR. NG: Yes, in 2018.

25 THE COURT: -- as opposed to in the past?

1 MR. NG: Yes, within November 6, and November 6,  
2 2018, (indiscernible).

3 THE COURT: Well, we have a -- we have a --  
4 there's an administrative claims bar date, okay, that's  
5 going to be set. This would be a post-petition claim,  
6 because you're saying it's November, right?

7 MR. NG: It's November and August, and --

8 THE COURT: Well, if it's August, it's pre --  
9 anyway, there's going to be a bar date. I'd rather not do  
10 this orderly. I think you need to comply with the bar date,  
11 file your claim, and then they'll have a better idea of what  
12 it's about, and it'd probably be -- I don't know how we  
13 liquidate it. I can't tell you right now, sir, but it  
14 doesn't sound like -- it's sounds like it may -- depending  
15 on what the claim actually says in writing, I can figure out  
16 how to deal with it.

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18 want --

19 THE COURT: No, I don't mean the consequences of  
20 the claim. I'm saying, where the claim -- how the claim  
21 arose, what the claim is based on, and I don't really know  
22 enough about that, at this point, because I don't have  
23 anything that really lays it out. The -- a bar date order  
24 what will say, you have to file proofs of claim by X date,  
25 you know, I don't know what it'll be, end of March,

1 beginning of April, some date. File your claim, lay out  
2 what you think the claim is and when it arose and what it's  
3 for, and then we can decide what to do with this. I don't  
4 really -- I have your complaint for the State Court action.  
5 I know what that's about, but I don't really have anything  
6 that lays out this claim.

7 MR. NG: Well, the claim that I'm referring to  
8 right now, that --

9 THE COURT: No, I -- I -- look, I do much better  
10 with things in writing.

11 MR. NG: Yes.

12 THE COURT: You need to lay it out in writing,  
13 because it -- I couldn't figure it out, okay?

14 MR. NG: Okay, Your Honor. So --

15 THE COURT: So, I'm going to adjourn this until  
16 after the bar date, the hearing on this motion, I'm going to  
17 adjourn it until after the bar date. The bar date will be  
18 set very soon. It'll probably be a hearing in April, okay?

19 MR. NG: Okay, Your Honor.

20 THE COURT: Okay.

21 MR. NG: I'm suffering a lot of damages and  
22 medical bills and everything, and that's why I'm trying to  
23 seek -- get justice.

24 THE COURT: And if it was a question of the  
25 records being released, I would direct the Debtors to

# **EXHIBIT 3**

**Weil, Gotshal & Manges LLP**

PRIVILEGED  
SUBJECT TO FRE 408 AND OTHER RULES OF SIMILAR IMPORT  
BY E-MAIL AND FEDEX

767 Fifth Avenue  
New York, NY 10153-0119  
+1 212 310 8000 tel  
+1 212 310 8007 fax

February 6, 2019

Garrett Fail  
+1 (212) 310-8451  
Garrett.Fail@weil.com

Brian Coke Ng  
40 Ann Street  
New York, New York 10038  
Brianeng38@gmail.com

Re: *In re Sears Holdings Corporation, et. al.*, Case No. 18-23538 (RDD)

Dear Mr. Ng:

Reference is made to your motion for relief from the automatic stay in the above-referenced cases [ECF No. 1006].

At the hearing held on January 18, 2018, Judge Drain stated on the record that if insurance is not available for your claims, "the motion should be denied because clearly, this is just a claim that would otherwise be dealt with in the process of doing the pre-bankruptcy claims." *See* Transcript, page 51. The Court further stated that, "if the Debtors show you that [the] insurance [you allege covers your claim] doesn't really cover your claim... then you should withdraw the motion," because Judge Drain would not grant it otherwise. *See* Transcript, page 52.

As part of your most recent filing, ECF No. 1721, you assert that the Debtors have a number of insurance policies relevant to your claims. As described below, each policy is either exhausted, not applicable for the location where your alleged claim asserted arose, or has a deductible that would require the Debtors to pay any claim covered thereunder.

1. HDO G2433398 (General Liability; 8/1/2009-8/1/2010): the Debtors believe you may be referring to Policy #HDOG24933398. This is the Debtors' General Liability policy, which is exhausted.
2. HDO G71097651 (General Liability; 8/1/2018-1/1/2019): This is a location-specific policy that does not apply to the location at 770 Broadway, New York, New York.
3. HDO G71097699 (General Liability; 8/1/2018-1/1/2019): This is a location-specific policy that does not apply to the location at 770 Broadway, New York, New York.

Brian Coke Ng  
February 6, 2019  
Page 2

**Well, Gotshal & Manges LLP**

4. HDO G71097730 (General Liability; 8/1/2018-1/1/2019): This is a location-specific policy that does not apply to the location at 770 Broadway, New York, New York.
5. CGO G71097778 (General Liability; 8/1/2018-1/1/2019): This is a location-specific policy that does not apply to the location at 770 Broadway, New York, New York.
- ✓ 6. HDO G71097614 (General Liability; 8/1/2018-1/1/2019): This is a \$5 million policy with a \$5 million deductible. As a result, the Debtors would be responsible for all costs and any damages, if this policy applied, up to \$5,000,000. For that reason, the Debtors would not consent to lift the automatic stay with respect to proceeds under this policy, and don't believe the Bankruptcy Court would permit litigation to proceed based on this policy alone.

Given that the Debtors would be required to pay for any defense costs and damages if your actions were to proceed, we ask that you withdraw your motion, without prejudice to refile at a later date.

Please confirm by the close of business on Thursday, February 8, 2018, so that we can advise the Court.

Regards,



Garrett Fail